

Ordinance No. \_\_\_\_\_, Series 2008

**AN ORDINANCE AMENDING AND RE-ENACTING  
CHAPTER 90 OF THE LOUISVILLE/JEFFERSON  
COUNTY METRO GOVERNMENT CODE OF  
ORDINANCES [LMCO] RELATING TO THE PROHIBITION  
OF SMOKING IN DESIGNATED AREAS.**

**Sponsored By: President Rick Blackwell**

**BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE  
LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT [THE COUNCIL] AS  
FOLLOWS:**

**SECTION I.** LMCO Chapter 90 is hereby amended and re-enacted to read as follows:

**§ 90.01 POLICY.**

In order to serve the public health, safety and general welfare, it is the declared purpose of this subchapter to prohibit smoking in all buildings open to the public and other establishments where employees work on the premises.

**§ 90.02 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***BUILDING.*** Any structure enclosed from the weather, whether or not windows or doors are open, which is closed in overhead by a roof or other covering of any material, whether permanent or temporary, and has 80% or more of its perimeter closed in by walls or other non-porous coverings of any material, whether permanent or temporary. If a person leases or possesses only a portion of a building, the term "building" applies to the leasehold or possessory interest as well.

***DWELLING.*** Any place used primarily for sleeping overnight and conducting activities of daily living, including, without limitation, a hotel or motel room or suite or a

hospital, hospice or nursing home room, but not a hotel, motel, hospital, hospice or nursing home lobby, common elevator, common hallway or other common area.

***ESTABLISHMENT.*** An entity or organization, including its owners, operators, directors, shareholders, partners, members, employees and possessions.

***SMOKE or SMOKING.*** The act of inhaling or exhaling the smoke from any lighted cigarette, cigar, or pipe, or other combustible tobacco product.

***TOBACCO BUSINESSES.*** Facilities that are owned or leased by tobacco manufacturers or wholesalers for the promotion, testing, research and/or development of tobacco products. For purposes of this subsection (2), a tobacco manufacturer or wholesaler shall be an establishment that generates 75% or more of its total annual gross revenues from the sale of tobacco products.

### **§ 90.03 PROHIBITION OF SMOKING IN PUBLIC BUILDINGS, ESTABLISHMENTS WITH EMPLOYEES AND EXCEPTIONS.**

(A) No person shall smoke within any building or establishment, which is open to the public, used to host or hold a public event, or employs one or more persons which work on the premises, except in

(1) In any dwelling. This exception does not extend to a lobby, common elevator, common hallway, or any other common area of a building containing attached dwelling units, hotel rooms or motel rooms, but if a hospital, hospice, or nursing home permits smoking in its dwelling rooms, smoking is not allowed in any room shared with a non-smoker without that person's consent. This exception does not extend to private residences when they are used as a licensed childcare, adult day care, or health care facility.

(2) Tobacco Businesses.

(B) Nothing in this subchapter shall prevent an owner, lessee, principal manager or person in control of any place, including, without limitation, any motor vehicle, outdoor area, or dwelling, from prohibiting smoking completely in such place, and no person shall fail to abide by such a private prohibition.

(C) Nothing in this subchapter shall authorize smoking in any place where it is otherwise prohibited by statute, ordinance, regulation or by order of the Fire Marshal.

**§ 90.04 POSTING OF SIGNS; REMOVAL OF ASHTRAYS.**

(A) No owner, lessee, principal manager, or person in control of a building or an establishment in any building shall fail to post signs, with letters of not less than one inch high or symbols no less than three inches high, using the words "No Smoking" or the international "No Smoking" symbol consisting of a pictorial representation of a burning cigarette surrounded by a red circle with a red bar across it conspicuously either on all public entrances or in a position clearly visible on entry into building or establishment.

(B) The owner, operator, manager, or designee or employee of every establishment in a building shall inform persons violating this subchapter of the applicable provisions thereof and require compliance.

(C) All ashtrays that are intended to be used on the premises of an establishment for the collection of ashes, butts, and/or other residue from smoking shall be removed from any area where smoking is prohibited by this subchapter and shall not be permitted by the owner, operator, manager or other person having control of the

establishment. Any permanent structure that functioned or was used as an ashtray shall be disabled or altered to prevent its use as an ashtray.

(D) The requirements of this section do not apply to any exempt dwelling.

#### **§ 90.05 DUTIES OF OWNERS OF BUILDINGS AND/OR ESTABLISHMENTS.**

(A) No owner, lessee, principal manager, or person in control of a building or establishment in a building shall fail to:

- (1) Ask smokers to refrain from smoking in any no-smoking area;
- (2) Demand a smoker leave the premises if the smoker refuses to extinguish any smoking materials after being requested to do so;
- (3) Immediately contact the Louisville Metro Police Department, or any other law enforcement agency with jurisdiction, and request they remove the offending smoker from the premises if the smoker has refused to extinguish the smoking materials and refuses to leave.

(B) No owner, principal manager, proprietor, or any other person in control of a business shall fail to ensure compliance by subordinates, employees, and agents with this subchapter.

#### **§ 90.06 ENFORCEMENT.**

The Louisville Metro Health Department shall enforce the provisions of this subchapter through the issuance of citations, and for this purpose, during times when employees are scheduled to work, may at all reasonable times enter in and on any that portion of the any premises of any establishment where the public is invited or where employees perform their duties and take breaks, including but not limited to those areas where food and beverages, alcoholic or otherwise, are

served, prepared or stored. Nothing herein shall be construed to prevent any peace officer with jurisdiction from issuing a citation for a violation of this subchapter committed in his or her presence. Notice of the provisions of this subchapter shall be given by Metro Government to all applicants for a business or other license.

## **§ 90.07 VIOLATIONS AND PENALTIES.**

(A) Except as otherwise provided in subsection (B) hereof, any violation of this subchapter, including a person who smokes in an area where smoking is prohibited, shall be classified as a civil offense and shall be enforced through the Code Enforcement Board ("Board") as provided in §§ 32.275 through 32.290, and as it may be amended from time to time. The civil penalties for violations of §§ 90.01 through 90.09 are as follows:

(1) A ~~minimum~~ penalty of no less than \$50 100 nor more than ~~and a maximum penalty of \$100 250~~ for the first offense within a one-year period;

(2) A ~~minimum~~ penalty of \$150 no less than \$250 nor more than ~~and a maximum penalty fine of \$250 500~~ for the second offense within a one-year period; and

(3) A ~~minimum~~ penalty fine of \$350 no less than \$500 ~~and a maximum penalty of \$500 nor more than \$1,000~~ for the third and each subsequent offense within a one-year period.

(4) Any person cited for violation of this subchapter as provided in subsection (A) hereof may pay the minimum civil penalty within seven days from the date of issuance or request a hearing regarding such penalty before the Board in accordance with §§ 32.275 et seq. If the person fails to pay the citation or request a

hearing within seven days, the person shall be deemed to have waived the right to a hearing. In this event, the Board shall enter a final order determining that the violation was committed and impose the civil penalty as set forth in the citation.

(B) Persons who smoke in an area where smoking is prohibited and who refuse to extinguish their smoking material when asked, ~~may~~ shall be required to leave the premises, and shall be subject to prosecution for criminal trespass if they do not leave when asked.

(C) Each ~~calendar day during which~~ a violation of this subchapter ~~occurs~~ shall constitute a separate and distinct offense.

#### **§ 90.08 REASONABLE DISTANCE.**

Smoking is prohibited within a reasonable distance from the outside entrance to any building so as to ensure that tobacco smoke does not enter the building through entrances, windows, ventilation systems, or other means.

#### **§ 90.09 NON-RETALIATION.**

No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this subchapter.

#### **§ 90.98 SEVERABILITY.**

If any provision, clause, sentence, or paragraph of this subchapter or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this subchapter which can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are declared to be severable.

**SECTION II.** This Ordinance shall take effect immediately upon its passage and approval.

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**Kathleen J. Herron**  
**Metro Council Clerk**

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**President of the Council**

\_\_\_\_\_  
**Jerry E. Abramson**  
**Mayor**

**Approved:** \_\_\_\_\_  
**Date**

**APPROVED AS TO FORM AND LEGALITY:**  
**Irv Maze**  
**Jefferson County Attorney**

**By:** \_\_\_\_\_  
Epm Draft 2 12/26/07 4:50 p.m.